

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

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|--|---|---------------------------------|
| WAYNE LEVINSON, Plaintiff, |) | |
| |) | |
| |) | |
| v. |) | CAUSE NO.: 2:22 -CV-270-JVB-JEM |
| |) | |
| STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY, |) | |
| Defendant. |) | |

ORDER

This matter is before the Court on Defendant's Motion to Dismiss, or in the Alternative, Motion for Sanctions [DE 16] filed on July 3, 2023. The Court referred this Motion to Magistrate Judge John Martin for a report and recommendation pursuant to Federal Rule of Civil Procedure 72(b) and Local Rule 72-1(b). [DE 20]. Judge Martin issued his Amended Report and Recommendation [DE 25] on July 28, 2023, finding that although dismissal for failure to prosecute was not warranted, it was appropriate to sanction Plaintiff's counsel for failure to participate in the discovery process as required.¹ Judge Martin recommended that the Motion [DE 16] be granted, for relief different than requested, insofar as Defendant be ordered to file an itemization of its costs and fees incurred in attempting to obtain outstanding discovery from Plaintiff by August 11, 2023,² with Plaintiff to file a response by August 25, 2023, and any reply to be filed by September 4, 2023. The parties were given notice that they had fourteen days in which to file objections to the report and recommendation. Neither party has filed objections.

Having reviewed the report and recommendation, the Court finds no clear error. Therefore, noting the lack of objection, the Court hereby **ADOPTS** in its entirety Judge Martin's

¹ Fact discovery closed on July 3, 2023. [DE 13]. Judge Martin reopened fact discovery, with a deadline of August 24, 2023, for the parties to respond to all outstanding discovery. [DE 25].

² Defendant filed an Affidavit of Attorney Fees [DE 28], including an itemization of its fees, on August 11, 2023.

Amended Report and Recommendation [DE 25] and incorporates the Amended Report and Recommendation into this Order. Accordingly, the Court **GRANTS**, for relief different than requested, the sanctions aspect of the Motion [DE 16]. In all other aspects, the Court **DENIES** the Motion [DE 16].

SO ORDERED on August 24, 2023.

s/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN, JUDGE
UNITED STATES DISTRICT COURT